

## **DRAFT PUBLIC HEALTH COUNCIL**

Meeting of the Public Health Council held Tuesday, July 27, 2004, at 10:25 a.m., at the Massachusetts Hospital School, 3 Randolph Street, Canton, Massachusetts. Public Health Council Members present were: Commissioner Christine C. Ferguson, Chair, Ms. Phyllis Cudmore, Mr. Manthala George, Jr., Ms. Maureen Pompeo and Dr. Thomas Sterne. Mr. Albert Sherman, Ms. Janet Slemenda, Mr. Gaylord Thayer, Jr. and Dr. Martin Williams were absent. Also in attendance was Attorney Howard Saxner, Acting General Counsel.

Chair Ferguson announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Massachusetts General Laws, chapter 30A, section 11A ½.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Dr. Paul Dreyer, Assistant Commissioner, Center for Quality Assurance and Control; Ms. Joyce James, Director, Determination of Need Program and Deputy General Counsel, Carol Balulescu.

### **RECORDS OF THE PUBLIC HEALTH COUNCIL MEETING OF MAY 25, 2004:**

Records of the Public Health Council Meeting of May 25, 2004 were presented to the Council for approval. After consideration, upon motion made and duly seconded, it was voted: (unanimously) to approve the Records of the Public Health Council Meeting of May 25, 2004 as presented.

### **PERSONNEL ACTIONS:**

In letters dated July 19, 2004, Val W. Slayton, MD, MPP, Interim Director of Medical Services, Tewksbury Hospital, Tewksbury, recommended approval of the appointments and reappointments to the various medical and allied health staffs of Tewksbury Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with recommendation of the Interim Director of Medical Services of Tewksbury Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following appointments and reappointments to the various medical and allied health staffs of Tewksbury Hospital be approved for a period of two years beginning July 1, 2004 to July 1, 2006:

<b><u>APPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Chistopher Clancy, MD	210202	Provisional Affiliate Psychiatry
Raymelle Schoos, MD	218408	Provisional Affiliate Psychiatry
Zoryada Vidal-Farino, MD	154171	Provisional Active Psychiatry

<b><u>REAPPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Susan Rudman-Carnevale, EdD	6593	Allied Psychology
Mimi Thein, MD	153783	Affiliate Psychiatry

In a letter dated July 12, 2004, Paul Romary, Executive Director, Lemuel Shattuck Hospital, Jamaica Plain, recommended approval of the appointments and reappointments to the various medical staffs of Lemuel Shattuck Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following appointments and reappointments to the various medical staffs of Lemuel Shattuck Hospital be approved:

<b><u>APPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
David Morin, MD	54798	Active/Psychiatry
Theodore Kim, MD	219806	Consultant/Internal Medicine
Ioannis Glavas, MD	207834	Consultant/Ophthalmology
<b><u>REAPPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Andrew Lipman, MD	216325	Consultant/Internal Medicine
Raymond Murphy, MD	28072	Consultant/Pulmonary Medicine
Punyamurtula Kishore, MD	43282	Consultant/General Medicine
Anjali Andalkar, MD	49235	Active/Pathology
Stephen Naber, MD	59990	Active/Pathology
Arthur Tischler, MD	34593	Consultant/Pathology
Annekathryn Goodman, MD	53787	Consultant/GYN
Andre St. Germain, DMD	10608	Consultant/Dentistry

In a letter dated June 23, 2004, Blake Molleur, Executive Director, Western Massachusetts Hospital, Westfield, recommended approval of the reappointments to the active and consulting medical staff of Western Massachusetts Hospital. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with recommendation of the Executive Director of Western Massachusetts Hospital, under the authority of the Massachusetts General Laws, chapter 17, section 6, the following reappointments to the medical staff of Western Massachusetts Hospital be approved:

<b><u>REAPPOINTMENTS:</u></b>	<b><u>MASS. LICENSE NO.:</u></b>	<b><u>STATUS/SPECIALTY:</u></b>
Chabilal Neergheen, MD	40509	Active/General Medicine Geriatrics
Gary Kaskey, MD	47764	Consulting/Psychiatry

### **REGULATION:**

#### **REQUEST FOR APPROVAL TO FINALIZE EMERGENCY AMENDMENTS TO 105 CMR 170.000: EMERGENCY MEDICAL SERVICES SYSTEM AND 105 CMR 150.000: LICENSING OF LONG-TERM CARE FACILITIES:**

Dr. Paul Dreyer, Associate Commissioner, Center for Quality Assurance and Control, accompanied by Attorney Carol Balulescu, Deputy General Counsel, Office of the General Counsel, presented the final emergency regulations 105 CMR 170.000 and 105 CMR 150.000 to the Council. Dr. Dreyer said in part, "...We are here today to request the Public Health Council's approval to finalize amendments to 105 CMR 170.000: Emergency Medical Services System and 105 CMR 150.000: Licensing of Long-Term Care Facilities that were promulgated on an emergency basis on May 25, 2004. The emergency amendments clarified the extend to which Emergency First Response (EFR) service to nursing homes and assisted living facilities with private provider contracts may be incorporated into service zone plans. The amendments clarified this issue by placing the decision-making responsibility with the licensed health care professionals at the facilities rather than with the local jurisdiction."

Dr. Dreyer noted further, "On May 25, 2004, the Public Health Council approved emergency amendments to 105 CMR 170.000 as recommended by the Department that explicitly prohibit local jurisdictions from requiring in service zone plans that a designated EFR service be dispatched to a nursing home or assisted living facility that has a contract with a private ambulance when the facility makes a request for primary ambulance service directly to that provider, so long as the facility is staffed with round-the-clock licensed health care professionals on site. If such a facility decides to request emergency response by dialing 911 or the local equivalent, then the dispatch of any designated EFR service will be according to the local service zone plan. Thus, the licensed health care professional on site will control the dispatch of emergency response. The Public Health Council approved the Department's recommended amendment to 105 CMR 150.000 (the nursing home regulation) that explicitly requires that nursing homes licensed by the Department develop and implement policies and procedures governing emergency transport including criteria for deciding whether to call 911 or a contracted private ambulance provider."

Dr. Dreyer noted that the Department of Public Health called a meeting of the Emergency Medical Care Advisory Board (EMCAB) on June 14, 2004, in order that the EMCAB would have a reasonable opportunity to review and make recommendations on the

emergency amendments prior to final adoption. The Department held a public hearing on July 6, 2004 and continued to accept written comments until July 9, 2004. The Public Health Council Members received copies of the written comments, the transcript of the July 6<sup>th</sup> public hearing, a copy of the sign-in sheet from that hearing and a staff summary of the comments offered by EMCAB members on June 14<sup>th</sup>. In regards to the comments, staff said, "In general, fire services and fire service-based EMS providers opposed the changes, while private ambulance providers and nursing homes supported the emergency amendments. The one point I would like to make about the testimony we received and the regulations is, if you read the testimony, a lot of it is written as if the regulations do something that they do not in fact do. They simply limit the ability of Service Zones to include criteria for the notification and dispatch of a designated Emergency First Responder to a licensed facility with staff 24/7 when that facility has a private ambulance, a private provider contract. The regulations had previously recognized the appropriateness of private provider contracts in nursing homes. The regulations did not affect private provider contracts at all. All the regulations on the EMS side do is make it explicit that Service Zone plans cannot mandate notification and dispatch of a designated EFR service when a licensed facility calls for a primary ambulance response through its private provider contract. On the nursing home side, what we tried to do is make explicit the requirement that the nursing home should have explicit policies and procedures about when to call the private provider contracted service versus the 911 system. The Department has made one change to the emergency amendments as the result of the public comments. Because the amendments place decision-making regarding calls to 911 at the facility level, it is important that health care facilities within a service zone are 'at the table' during service zone planning. The Department intends to amend 105 CMR 170.500 (B) to add the participation of service zone health care facilities, including nursing homes, as a required element to the service zone planning process."

Discussion followed whereby Council Members Mr. George, Jr, Dr. Sterne, and Ms. Cudmore sought clarification on the regulations. Dr. Dreyer explained that the licensed health care professional on site, referred to in the regulation would indeed be a nurse (LPN or RN) in the nursing home or assisted living facility.

Clarification was requested on 170.355: Responsibility to Dispatch, Treat and Transport (3) (4). Attorney Balulescu noted some circumstances that would require an ambulance service to triage an emergency call (i.e., under these final regulations and with an approved service zone plan in place):

If a private contracted ambulance service cannot respond to a call in a timely manner as set in the service zone plan then it must triage the call to the designated primary ambulance provider in the service zone plan (911)

If a private ambulance receives an emergency call and it is not the contracted private service for a nursing home or assisted living facility it must triage the call to the designated primary ambulance provider in the service zone plan (911)

If people living in their own home call a private ambulance service, the service must triage the call to the designated primary ambulance provider under the service zone plan.

In conclusion, Dr. Dreyer stated, “The Department requests that you approve the final promulgation of the amendments with the addition of 105 CMR 170.500 (B) (5) which states ‘the health care facilities, including nursing homes, that appear in the service zone inventory pursuant to 105 CMR 170.510(A)(5)’. Following your approval, the Department intends to file these amendments with the Secretary of the Commonwealth for permanent adoption, to take effect upon publication in the Massachusetts Register. Additionally, immediately following your approval, the Department intends to release guidance consistent with these regulations to communities to assist them in beginning the service zone planning process.”

After consideration, upon motion made and duly seconded, it was voted (unanimously) to approve the Request to **Finalize Emergency Amendments to 105 CMR 170.000: Emergency Medical Services System and 105 CMR 150.000: Licensing of Long-Term Care Facilities**; that a copy be forwarded to the Secretary of the Commonwealth; and that a copy be attached and made a part of this record as **Exhibit Number 14,792**.

#### **DETERMINATION OF NEED:**

#### **ALTERNATE PROCESS FOR TRANSFER OF OWNERSHIP APPLICATION:**

#### **PROJECT APPLICATION NO. 5-3A77 OF HIGHMARK HEALTHCARE, LLC:**

Ms. Joyce James, Director, Determination of Need Program, presented the Highmark Healthcare LLC application to the Council. She said in part, “...Highmark Healthcare, LLC with a place of business at 4550 Lena Drive, Mechanicsburg, PA, is seeking Determination of Need for transfer of ownership and original licensure of New Bedford Rehabilitation Hospital located at 4499 Acushnet Avenue, New Bedford, MA. The transfer of ownership results from acquisition of 100% equity ownership interests in 4499 Acushnet Avenue Operating Company, LLC. No change in services and no capital expenditure are contemplated for this transfer of ownership. 4499 Acushnet Avenue Operating Company, LLC will remain the licensee of the Hospital.”

Ms. James indicated further that based upon a review of the application as submitted and clarification of issues by the Applicant, that the application satisfies the requirements for Change of Ownership found in 105 CMR 100.600 et seq of the Determination of Need Regulations. Staff also found that the Applicant satisfies the standards applied under 100.602 as follows:

- A. Individuals residing in the Hospital’s health systems area will comprise a majority of the individuals responsible for decisions concerning:
  - 1. approved of borrowing in excess of \$500,000;

2. addition or deletion of a major service;
  3. approval of capital and operating budgets; and
  4. approval of the filing of an application for determination of need.
- B. The Division of Medical Assistance did not submit any comments on access problems for Medicaid recipients in the Hospital's primary service area.
- C. The Division of Health Care Quality has determined that the Applicant and any health care facility affiliates have not been found to have engaged in a pattern or practice in violation of the provisions of M.G.L.c.111, §51 (D).
- D. The Department has determined that the Applicant, a non-acute care hospital, is not subject to requirements for free care set forth in M.G.L.c.118G.
- E. The Division of Health Care Quality has confirmed that the Applicant meets the requirement that it is an affiliate of a hospital licensed by the Department.

In closing, Ms. James stated, "Based upon staff analysis and findings, staff recommends approval of Project No. 5-3A77 filed by Highmark Healthcare, LLC with a place of business at 4550 Lena Drive, Mechanicsburg, PA, for transfer of ownership and original licensure of New Bedford Rehabilitation Hospital, located at 4499 Acushnet Avenue, New Bedford, MA. The transfer of ownership results from acquisition of 100% equity ownership interests in 4499 Acushnet Avenue Operating Company, LLC, the licensee of the Hospital, by Highmark Healthcare, LLC from THCI of Massachusetts, LLC, the sole member of 4499 Acushnet Avenue Operating Company, LLC. No change in services and no capital expenditure are contemplated for this transfer of ownership. 4499 Acushnet Avenue Operating Company, LLC will remain the licensee of the Hospital.

After consideration, upon motion made and duly seconded, it was voted unanimously to approve **Project Application No. 5-3A77 of Highmark Healthcare LLC's Request for transfer of ownership and original licensure of New Bedford Rehabilitation Hospital**, resulting from acquisition of 100% equity interests in 4499 Acushnet Avenue Operating Company, LLC, the licensee of the Hospital, from THCI of Massachusetts, LLC by Highmark Healthcare, LLC.

The meeting adjourned at 10:45 a.m.

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Christine C. Ferguson  
Chair

LMH/lmh